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OFFICE OF PETITIONS

In re Application of
Makoto Kudo
Application No. 10/601,136
Filed: June 20, 2003
Attorney Docket No. 81751.0062

DECISION ON PETITION

This is decision on the petition filed August 14, 2006, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

On December 14, 2005, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application became abandoned on March 15, 2006. On August 4, 2006, the Office mailed a Notice of Abandonment.

In the present petition, petitioner asserted that he filed a timely response to the nonfinal Office action on March 10, 2006. In support of the assertion, petitioner submitted a copy of the reply in the form of an amendment, bearing a certificate of mailing dated March 10, 2006. Nevertheless, the record does not show that the USPTO received the amendment. Therefore, petitioner is relying on the certificate of mailing as evidence of the timely filing of the amendment on March 10, 2006.

Pursuant to Section 711.03(c)(1)(B) of the Manual of Patent Examining Procedure:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. **If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application).**

(Emphasis added).

Petitioner did not provide a statement under 37 CFR 1.8(b)(3), attesting to a personal knowledge of the mailing of the original response on the date indicated on the certificate by the person who signed the certificate.

Accordingly, the petition to withdraw the holding of abandonment is dismissed. Before the Office can withdraw the holding of abandonment, petitioner must submit a request for reconsideration and a statement in compliance with 37 CFR 1.8(b)(3). A request for reconsideration of this decision must be submitted with TWO (2) MONTHS of the mailing date of this decision. Extensions of this time period may be granted under 37 CFR 1.136. The request for reconsideration should include a cover sheet entitled "Renewed Petition Under 37 CFR 1.181."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
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By FAX: (571) 273-8300
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Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

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